

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

RICHARD FUSELIER,

CV 09-1412-BR

Plaintiff,

OPINION AND ORDER

v.

UNITED STATES,

Defendant.

RICHARD FUSELIER
3527 Ambassador Caffery #32
Lafayette, LA 70503

Plaintiff Pro Se

DWIGHT C. HOLTON
United States Attorney
ADAM D. STRAIT
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683

Attorneys for Defendant

BROWN, Judge.

Plaintiff brings this civil action *pro se*. Currently before the Court is Defendant's Motion to Dismiss (#37). For the reasons set forth below, Defendant's Motion is GRANTED, and Plaintiff's Complaint is DISMISSED with prejudice.

BACKGROUND

Plaintiff brings this action in an attempt to enforce a purported "foreign judgment." The purported "foreign judgment" is in fact an "Order" issued by the "Common Law Court of the United States of America." The "Order" purports to confer immunity from tax actions on Plaintiff.

DISCUSSION

Plaintiff's Complaint suffers from multiple defects. First, pursuant to the Anti-Injunction Act, 26 U.S.C. § 7421(a), with certain limited exceptions, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." If a suit seeks to restrain the collection of a tax and does not fall within one of the statute's enumerated exceptions or judicially created exceptions, it must be dismissed for lack of subject matter jurisdiction. See *Sokolow v. United States*, 169 F.3d 663, 665 (9th Cir. 1999); *Blech v. United States*, 595 F.2d 462, 466 (9th Cir. 1979).

The purported "Order" Plaintiff seeks to enforce herein claims to enjoin the United States from "prosecuting various collection actions in administrative proceedings and in United States courts pending appeal in the Supreme Court." Plaintiff has not established that this "Order" falls within any of the exceptions to the Anti-Injunction Act. Accordingly, this Court lacks subject matter jurisdiction, and Plaintiff's Complaint must be dismissed.

Second, "[t]he United States is immune from suit unless it consents to waive its sovereign immunity." *Hodge v. Dalton*, 107 F.3d 705, 707 (9th Cir. 1997). If the United States has not waived immunity, this Court lacks subject matter jurisdiction over the suit. *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008, 1015-16 (9th Cir. 2007). Plaintiff has not identified any valid consent to suit by the United States.

Finally, to avoid dismissal, a complaint must present a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Plaintiff has not done so. As Plaintiff himself has previously been advised, the "Common Law Court of the United States of America" is fictitious. See *United States v. Fuselier*, 2008 WL 352207, *1 (W.D. La., Feb. 7, 2008); see also *Scotka v. State*, 856 S.W.2d 790, 791-92 (Tex. App. 1993) (appellant failed to show "Common Law Court of the United States" even exists under the United States Constitution or by act of

Congress). As such, Plaintiff's attempt to execute a purported judgment from this fictitious entity does not present a claim for relief that is plausible on its face.

CONCLUSION

For these reasons, the Court GRANTS Defendant's Motion to Dismiss (#37). Because there is not any basis on which Plaintiff could re-plead a plausible claim that cures the defects in his Complaint, the Court **DISMISSES** Plaintiff's Complaint with prejudice. All other pending motions are hereby DENIED AS MOOT.

IT IS SO ORDERED.

DATED this 9th day of September, 2010.

/s/ Anna J. Brown
ANNA J. BROWN
United States District Judge